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8 Attorneys for Christina W. Lovato, Chapter 7 Trustee

9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF NEVADA**

11 In re
12 DOUBLE JUMP, INC.
13 Debtor.

Lead Case No.: BK-19-50102-gs
(Chapter 7)

Substantively consolidated with:

19-50130-gs	DC Solar Solutions, Inc.
19-50131-gs	DC Solar Distribution, Inc.
19-50135-gs	DC Solar Freedom, Inc.

16 CHRISTINA W. LOVATO,
17 Plaintiff,
18 v.
19 NULEAF CAPITAL INVESTORS GROUP,
20 LLC,
21 Defendant.

Adversary No.: 21-05014-gs

**MOTION FOR ORDER (1) APPROVING
COMPROMISE AND SETTLEMENT
AGREEMENT WITH NULEAF CAPITAL
INVESTORS GROUP, LLC; AND (2)
FOR AWARD OF CONTINGENCY FEE**

22 Hearing Date: October 28, 2021

23 Hearing Time: 2:00 p.m.

25 SEE ATTACHED.

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18 <input checked="" type="checkbox"/> Affects DC Solar Freedom, Inc.	19-50135-gs DC Solar Freedom, Inc.
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27 Christina Lovato, the duly appointed and acting trustee (“*Trustee*”) for the substantively
 28 consolidated chapter 7 estates of DC Solar Solutions, Inc. (“*Solutions*”), DC Solar Distribution,
 Inc. (“*Distribution*”), DC Solar Freedom, Inc. (“*Freedom*”, and together with Solutions and
 Distribution, “*DC Solar*”) and Double Jump, Inc. (“*DJ*,” and together with DC Solar, the
 “*Estate*”), files this motion to approve the compromise and settlement with NuLeaf Capital
 Investors Group, LLC (“*NuLeaf*” or “*Defendant*”) pursuant to F.R.B.P. 9014 and 9019 and

payment of a contingency fee to special litigation counsel (“*Motion*”). The Motion is supported by the separately filed Declaration of Christina Lovato and is based upon the following discussion of facts and law.

I. Factual Background

A. Procedural Background

1. Prepetition, DC Solar was engaged in a business related to manufacturing, marketing, selling, and leasing mobile solar generators.

2. However, certain of DC Solar's insiders, including Jeff Carpoff and Paulette Carpoff ("Carpoffs"), were also perpetrating a Ponzi scheme ("Carpoff Ponzi Scheme").

3. On December 18, 2018, federal law enforcement raided DC Solar's business locations, effectively closing down DC Solar's operations.

4. In late January and early February 2019, the Debtors filed for chapter 11 relief before this Court, commencing these bankruptcy cases (“*Bankruptcy Cases*”).

5. On March 22, 2019, this Court converted the Bankruptcy Cases to cases under chapter 7 and appointed the Trustee as chapter 7 trustee of the Debtors' estates.¹ The Estate has been substantively consolidated.²

B. Trustee's Claims

6. On or about December 18, 2015, Solutions transferred \$490,000 to the Defendant (“Transfer”).

7. On January 19, 2021, the Trustee filed her complaint (“*Complaint*”) commencing Adversary Case No. 21-5014-GS (Bankr. D. Nev.) against the Defendant (“*Adversary*”).

8. In her Complaint, the Trustee asserted that the Debtors neither received “value” nor “reasonably equivalent value” in exchange for the Transfer. And thus, the Transfer is avoidable and recoverable under Section 544 of the Code as both actually and constructively fraudulent.

¹ ECF Nos. 439 & 440.

² ECF No. 2613.

1 9. The Trustee's position is that in exchange for the Transfer, a Carpoft-affiliate
 2 named JPC Group Investments, LLC obtained an ownership interest in the Defendant ("**Interest**"),
 3 and that the Debtors received no value in exchange for the Transfer.

4 10. Prior to commencing the Adversary, the Trustee reviewed and considered
 5 numerous documents. These documents included those relating to (1) the Transfer and the
 6 Defendant; and (2) the Carpoft Ponzi Scheme more generally, and (3) the Carpofts' efforts to loot
 7 DC Solar for their own personal benefit.

8 11. After commencing the Adversary, the Defendant filed a motion to dismiss, the
 9 Trustee filed a response, the Defendant filed a reply, this Court held a hearing, and this Court
 10 entered an Order on the motion; the Trustee thereafter filed an amended complaint.³

11 12. Also, after commencing the Adversary, the Trustee communicated with the
 12 Defendant regarding the possibility of a consensual resolution, and the Parties' differing positions
 13 of fact and law. The parties continued to exchange documents and information. As one example,
 14 the Trustee learned that after the commencement of the Bankruptcy Cases, a party closely affiliated
 15 with the Defendant purchased the Interest in exchange for a payment of \$100,000.

16 13. On July 30, 2021, with agreement of the Parties, this Court entered its Amended
 17 Order Scheduling Settlement and Status Conference [ECF No. 27] in the Adversary, directing a
 18 judicial settlement conference before U.S. Bankruptcy Judge Christopher D. Jaime to take place
 19 by zoom on August 27, 2021 ("**Settlement Conference**").

20 14. Prior to the Settlement Conference, the Trustee and the Defendant exchanged
 21 offers for resolution of the Adversary.

22 15. At the Settlement Conference, and subject to this Court's approval, the Trustee and
 23 the Defendant reached an agreement on the terms of a settlement of the Adversary and any other
 24 claims. Thereafter, the Trustee and Defendant negotiated and then executed a Stipulation of
 25 Settlement ("**Settlement Agreement**"). A copy of the Settlement Agreement is attached to the
 26
 27

28 ³ Adversary, ECF Nos. 7, 10, 11, 14, 15, 21, 25.

1 contemporaneously filed declaration of Christina Lovato. The Trustee believes that the Settlement
 2 Agreement is in the best interests of the Estate and should be approved.

3 **II. Settlement Terms**

4 16. The key aspects of the Settlement Agreement, as more particularly described
 5 therein, are the following:

- 6 • The Defendant shall pay the Trustee \$230,000 (“**Settlement Payment**”) pursuant to
 7 the Settlement Agreement, in installment payments, with the first payment being
 8 made on October 27, 2021 (provided that the Court has entered an Order approving
 the Settlement Agreement by that date).
- 9 • The Defendant waives all claims against the Debtors and the Estate, including under
 10 Section 502(h) of the Bankruptcy Code.
- 11 • Subject to and except for their obligations in this Settlement Agreement, the Trustee
 12 and the Defendant shall each release and waive all claims against the other.

13 **III. Legal Discussion**

14 17. Fed. R. Bank. P. 9019(a) provides in relevant part that "[o]n motion ... and after
 15 notice and a hearing, the court may approve a compromise or settlement."

16 18. In the Ninth Circuit, motions to approve a compromise and settlement agreement
 17 are reviewed under the four criteria set forth in *In re A&C Properties, Inc.*, 784 F. 2d 1377, 1381
 18 (9th Cir. 1986), cert. denied, 479 U.S. 854 (1986). Those criteria are: (1) likelihood of success on
 19 merits of the claims in the underlying litigation; (2) the complexity of the litigation involved, and
 20 the expense, inconvenience and delay necessarily attending it; (3) the difficulties, if any, to be
 21 encountered in the matter of collection; and (4) the paramount interest of the creditors and a proper
 22 deference to their reasonable views in the premises.

23 19. Compromises are favored under the Bankruptcy Code, and approval of a
 24 compromise rests in the sound discretion of the Court.⁴ The bankruptcy court is afforded wide
 25 latitude in approving compromise agreements which it determines to be fair, reasonable, and

26
 27
 28 ⁴ *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc., v. Anderson*, 390 U.S. 414, 424 (1968).

1 adequate.⁵ The court need not conduct an exhaustive investigation into the claim sought to be
 2 compromised.⁶

3 20. The Trustee, in her informed business judgment, submits that approval of the
 4 Settlement Agreement is in the best interests of the Debtors' estates.⁷

5 21. Furthermore, that the parties' settlement was reached with the able assistance of
 6 Judge Jaime as the mediator / facilitator further supports that the proposed settlement was fairly
 7 reached and should be approved.⁸

8 **A. The Settlement Should Be Approved**

9 22. Based upon these principles, the Trustee submits that the Settlement Agreement
 10 falls well above the lowest point of the range of reasonableness and should be approved.

11 **Probability of success in litigation**

12 23. This factor militates in favor of approval of the Settlement Agreement.

13 24. While the Trustee believes her claims are meritorious, all litigation presents risks.
 14 Here, among other potential defenses, the Defendant asserts that the Debtors did not make the
 15 Transfer with the intent to hinder, delay, or defraud creditors. Indeed, the Defendant was successful
 16 in this argument at the motion-to-dismiss stage of the litigation, and as a result the Trustee was
 17 directed to (and did) file an amended complaint.⁹

18
 19
 20 ⁵ *In re Woodson*, 839 F.2d 610 (9th Cir. 1988).

21 ⁶ *In re Walsh Construction, Inc.*, 699 F.2d 1325, 1328 (9th Cir. 1982).

22 ⁷ See *In re NII Holdings, Inc.*, 536 B.R. 61, 100 (Bankr. S.D.N.Y. 2015) ("Although a court may
 23 not substitute the debtor's judgment for its own and instead must undertake its own, independent,
 24 reasoned analysis of the claims at issue, a court may nonetheless take into account the debtor's
 25 business judgment in recommending a settlement as well as the opinions of the debtor and the
 26 parties to the settlement.") (citing cases, citation removed).

27 ⁸ See *In re Trib. Co.*, 464 B.R. 126, 155 (Bankr. D. Del.), on rec'd in part, 464 B.R. 208 (Bankr.
 28 D. Del. 2011), aff'd sub nom. 587 B.R. 606 (D. Del. 2018), aff'd sub nom. 972 F.3d 228 (3d Cir.
 29 2020), and aff'd in part sub nom. 587 B.R. 606 (D. Del. 2018), and aff'd sub nom. 972 F.3d 228
 30 (3d Cir. 2020) ("[I]n assessing the fairness of proposed settlement, a court may consider the extent
 31 that the settlement is truly the product of arms-length bargaining ..."); see also *Guevoura Fund
 32 Ltd. v. Sillerman*, 2019 WL 6889901, *6 (S.D.N.Y. Dec. 18, 2019) ("The active involvement of
 33 experienced and independent mediators in the negotiation of the Settlement is strong evidence of
 34 the absence of any collusion and further supports the presumption of fairness.").

35 ⁹ Adversary, ECF Nos. 7, 10, 11, 14, 15, 21, 25.

1 25. The Defendant also challenged the Trustee's allegation that Carpoff perpetrated a
 2 Ponzi scheme through the Debtors; while the Trustee prevailed at the motion-to-dismiss stage, the
 3 Trustee believes that the Defendant intended to make that argument again at later stages of the
 4 litigation. Moreover, the Trustee expects that the Defendant would have argued that the Transfer
 5 did provide some benefit to the Debtors. And the Trustee expects that the Defendant would have
 6 argued that the \$100,000 payment offset certain recoveries available to the Trustee.

7 26. While the Trustee believes she would have defeated these arguments, at least in
 8 material part, she does recognize some risk. And, if certain of the Defendant's arguments were
 9 accepted, the Defendant would arguably have a complete defense to the Trustee's claims given
 10 that, based on her investigation, the Trustee does not challenge that the Defendant received the
 11 Transfer in good faith.

12 **Complexity of litigation and attendant expense, inconvenience and delay**

13 27. This is a significant consideration that also militates in favor of approval of the
 14 Settlement Agreement.

15 28. While the Trustee's claims are typical claims litigated before this Court, the
 16 Defendant did not file a proof of claim in these Bankruptcy Cases and thus would have the right
 17 to a jury trial. For this reason and others, while the Trustee's special counsel is compensated on a
 18 contingency-fee basis, the Trustee's prosecution of this Adversary would be accompanied by
 19 significant costs. These costs include those necessary to probe the intent of the Carpoffs – the
 20 Debtors' former insiders who have pled guilty to crimes – such as arranging for and attending
 21 prison-depositions. These costs also potentially include an expert witness on the financial aspects
 22 of the Debtors' operation, including that Carpoff perpetrated a Ponzi scheme through the Debtors.
 23 And a jury trial is often accompanied by certain costs (*e.g.*, travel, a jury consultant) and delay.

24 29. The Settlement Agreement addresses these concerns. The parties avoid litigating
 25 fact-specific claims with the associated expense, inconvenience, and delay of doing so. Here, there
 26 is meaningful benefit to the estates in resolving this matter at the early stages of the litigation,
 27 without further risk, and before meaningful expenses are incurred.

28

Collectability

30. Collectability was not an issue with respect to reaching the Settlement Agreement.

Paramount interest of creditors

31. This is a significant consideration that militates in favor of approval of the Settlement Agreement.

32. The Settlement Agreement provides for a \$230,000 payment, in installments, representing a material portion of the Transfer - and an even greater percentage of the Transfer if the \$100,000 payment is considered. And the Defendant gains no § 502(h) or other claim against the Estate. This is a very good outcome when measured against potential defenses and litigation risks, as well as the costs and delay associated therewith. By resolving at this early stage of the Adversary, the Trustee is eliminating delay in monetizing her claims and efficiently administering the estates for the benefit of creditors. The settlement also enables the Trustee and her counsel to focus on other substantial litigation claims against other third parties in these Bankruptcy Cases, which is a meaningful consideration given the Trustee expects litigation recoveries to provide the bulk of the recoveries to creditors.

33. Furthermore, that the parties' settlement was reached with the able assistance of Judge Jaime as the mediator / facilitator via an arms-length process, evinces the fairness of the proposed settlement.

34. For all the reasons discussed in this Motion, the Settlement Agreement favorably and immediately avoids litigation claims with meaningful risk. Thus, approval of the Settlement Agreement is in the paramount interest of creditors.

IV. Payment of Contingency Fee

35. Meland Budwick, P.A. (“**MB**”), as special litigation counsel, is to be compensated on a pure contingency fee basis of 25% of any recovery obtained.¹⁰ The Trustee seeks allowance of, and authority to pay MB, a 25% contingency fee equal to \$57,500 at the time the Trustee receives the Settlement Payment (payment of the percentage of the contingency fee as the Trustee receives each installment payment), without the need for further Court Order.

¹⁰ ECF Nos. 1490 and 1502.

1 36. Pursuant to 11 U.S.C. § 330(a), the bankruptcy court reviews the services the
 2 professional provided, and decides whether the requested compensation is reasonable. The Trustee
 3 submits that the requested contingency fee satisfies this standard.¹¹

4 37. First, 25% is a materially lower percentage than often charged by commercial
 5 contingency counsel.¹² Second, the Court pre-approved the contingency fee arrangement after
 6 notice to all parties in interest. Third, given the limited assets of the estates when MB was retained,
 7 the contingency fee arrangement benefitted the estates by shifting material risk from the estates
 8 onto MB which immediately invested enormous resources investigating and pursuing claims for
 9 the Estate's benefit.¹³ Fourth, the contingency fee arrangement ensures that MB's compensation is
 10 merit-based and directly tied to performance and results. Fifth, the contingency fee arrangement
 11 applies to an array of Estate claims, and uniform application is in accord with that agreement.
 12 Sixth, MB has performed significant work (including formal and informal discovery) investigating
 13 and pursuing this and other claims in a high-quality and expeditious manner given the complexities
 14 of this Bankruptcy Case and despite the challenges imposed by COVID-19.

15 38. Significantly, MB was charged with considering and investigating claims against
 16 hundreds of potential targets. MB invested substantial resources to vet claims against potential
 17 targets, ultimately recommending to the Trustee which claims are meritorious and which should
 18 not be brought. As a result, MB's efforts included determining the Trustee does not hold claims
 19 against those potential targets. The contingency fee agreement does not provide for MB to be
 20

21 ¹¹ Special counsel: (1) performed high-quality work; (2) addressed somewhat challenging factual
 22 and legal questions; (3) employed significant skill; (4) obtained a timely result; (5) performed its
 23 work efficiently; (6) drew upon a high level of capabilities and experience; and (7) was met with
 significant opposition by sophisticated counsel.

24 ¹² See *In re Private Asset Grp., Inc.*, 579 B.R. 534, 544-45 (Bankr. C.D. Cal. 2017) ("Outside of
 25 bankruptcy, contingency fees are often 33 percent or, if there is an appeal, 40 percent."); *In re Pearlman*, 2014 WL 1100223, *3 (Bankr. M.D. Fla. Mar. 20, 2014) ("Resting again on its
 26 independent judgment, the Court finds the 35% contingency fee to be reasonable and in line with
 similar non-bankruptcy rates.").

27 ¹³ *Fann Contracting, Inc. v. Garman Turner Gordon LLP*, 620 B.R. 141, 147 (D. Nev. 2020); see
 28 also, generally, *In re Smart World Techs., LLC*, 423 F.3d 166, 180 (2d Cir. 2005) ("Here, Smart
 World's counsel was retained on a contingency basis, meaning that Smart World's pursuit of its
 adversary claims would have subjected the bankruptcy estate to no risk, while allowing the estate
 to reap any potential award.").

1 compensated for these significant efforts that benefitted the Estate. Rather, these efforts are part of
2 the basket of services MB provides to the Trustee and the Estate.

3 39. Finally, MB has provided services to assist in administrative aspects of these cases,
4 including the pursuit of substantive consolidation, review of certain significant claims, and matters
5 related to MSG sales. MB did not seek any compensation for that work, which was substantial and
6 benefitted the Estate. MB also does not seek a contingency fee or compensation for the Defendant's
7 waiver of any Section 502(h) claim (or any other claim) against the Estate.

V. Conclusion

9 40. Based upon the foregoing, the Trustee requests an order approving the Settlement
10 Agreement as well as the contingency fee and granting such other and further relief as this Court
11 deems just and proper.

12 DATED: September 27, 2021.

MELAND BUDWICK, P.A.

/s/ Solomon Genet

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